

House Study Bill 614 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED SECRETARY OF
STATE BILL)

A BILL FOR

1 An Act relating to the organization and administration of
2 limited partnerships and limited liability companies doing
3 business in Iowa.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

UNIFORM LIMITED PARTNERSHIP ACT

Section 1. Section 488.102, subsection 5, Code 2016, is amended by striking the subsection.

Sec. 2. Section 488.102, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 19A. *“Registered office”* means:

a. With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 488.114.

b. With respect to a foreign limited partnership, its principal office.

Sec. 3. Section 488.111, unnumbered paragraph 1, Code 2016, is amended to read as follows:

A limited partnership shall maintain at its ~~designated~~ registered office all of the following information:

Sec. 4. Section 488.114, Code 2016, is amended to read as follows:

488.114 Office Registered office and registered agent for service of process.

1. A limited partnership shall designate and continuously maintain in this state both of the following:

a. ~~An~~ A registered office, which need not be a place of its activity in this state.

b. ~~An~~ A registered agent for service of process.

2. A foreign limited partnership shall designate and continuously maintain in this state ~~an~~ a registered agent for service of process.

3. ~~An~~ A registered agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of Iowa or other person authorized to do business in this state.

Sec. 5. Section 488.115, Code 2016, is amended to read as follows:

488.115 Change of designated registered office or registered

1 **agent for service of process.**

2 1. In order to change its ~~designated~~ registered office,
3 registered agent for service of process, or the address of its
4 registered agent for service of process, a limited partnership
5 or a foreign limited partnership may deliver to the secretary
6 of state for filing a statement of change containing all of the
7 following:

8 a. The name of the limited partnership or foreign limited
9 partnership.

10 b. The street and mailing address of its current ~~designated~~
11 registered office.

12 c. If the current ~~designated~~ registered office is to be
13 changed, the street and mailing address of the new ~~designated~~
14 registered office.

15 d. The name and street and mailing address of its current
16 registered agent for service of process.

17 e. If the current registered agent for service of process or
18 an address of the agent is to be changed, the new information.

19 2. Subject to [section 488.206, subsection 3](#), a statement of
20 change is effective when filed by the secretary of state.

21 Sec. 6. Section 488.116, Code 2016, is amended to read as
22 follows:

23 **488.116 Resignation of registered agent for service of**
24 **process.**

25 1. In order to resign as an registered agent for service
26 of process of a limited partnership or foreign limited
27 partnership, the agent must deliver to the secretary of state
28 for filing a statement of resignation containing the name of
29 the limited partnership or foreign limited partnership.

30 2. After receiving a statement of resignation, the
31 secretary of state shall file it and mail a copy to the
32 ~~designated~~ registered office of the limited partnership or
33 foreign limited partnership and another copy to the principal
34 office if the address of the office appears in the records of
35 the secretary of state and is different from the address of the

1 ~~designated~~ registered office.

2 3. ~~An~~ A registered agency for service of process is
3 terminated on the date on which the statement of resignation
4 was filed with the secretary of state.

5 Sec. 7. Section 488.117, subsections 1, 2, and 3, Code 2016,
6 are amended to read as follows:

7 1. ~~An~~ A registered agent for service of process appointed by
8 a limited partnership or foreign limited partnership is ~~an~~ a
9 registered agent of the limited partnership or foreign limited
10 partnership for service of any process, notice, or demand
11 required or permitted by law to be served upon the limited
12 partnership or foreign limited partnership.

13 2. If a limited partnership or foreign limited partnership
14 does not appoint or maintain ~~an~~ a registered agent for service
15 of process in this state or the registered agent for service
16 of process cannot with reasonable diligence be found at the
17 registered agent's address, the secretary of state is an agent
18 of the limited partnership or foreign limited partnership upon
19 whom process, notice, or demand may be served.

20 3. Service of any process, notice, or demand on the
21 secretary of state may be made by delivering to and leaving
22 with the secretary of state duplicate copies of the process,
23 notice, or demand. If a process, notice, or demand is served
24 on the secretary of state, the secretary of state shall forward
25 one of the copies by certified mail or restricted certified
26 mail to the limited partnership or foreign limited partnership
27 at its ~~designated~~ registered office.

28 Sec. 8. Section 488.201, subsection 1, paragraph b, Code
29 2016, is amended to read as follows:

30 *b.* The street and mailing address of the initial ~~designated~~
31 registered office and the name and street and mailing address
32 of the initial registered agent for service of process.

33 Sec. 9. Section 488.210, subsection 1, paragraph b, Code
34 2016, is amended to read as follows:

35 *b.* The street and mailing address of its ~~designated~~

1 registered office and the name and street and mailing address
2 of its registered agent for service of process in this state.

3 Sec. 10. Section 488.210, subsection 4, Code 2016, is
4 amended to read as follows:

5 4. If a filed biennial report contains an address of a
6 ~~designated~~ registered office or the name or address of an a
7 registered agent for service of process which differs from the
8 information shown in the records of the secretary of state
9 immediately before the filing, the differing information in
10 the biennial report is considered a statement of change under
11 section 488.115.

12 Sec. 11. Section 488.304, subsection 1, Code 2016, is
13 amended to read as follows:

14 1. On ten days' demand, made in a record received by
15 the limited partnership, a limited partner may inspect and
16 copy required information during regular business hours in
17 the limited partnership's ~~designated~~ registered office. The
18 limited partner need not have any particular purpose for
19 seeking the information.

20 Sec. 12. Section 488.304, subsection 4, unnumbered
21 paragraph 1, Code 2016, is amended to read as follows:

22 Subject to [subsection 6](#), a person dissociated as a limited
23 partner may inspect and copy required information during
24 regular business hours in the limited partnership's ~~designated~~
25 registered office if the person complies with all of the
26 following:

27 Sec. 13. Section 488.407, subsection 1, paragraph a, Code
28 2016, is amended to read as follows:

29 a. In the limited partnership's ~~designated~~ registered
30 office, required information.

31 Sec. 14. Section 488.807, subsection 2, paragraph a, Code
32 2016, is amended to read as follows:

33 a. Be published at least once in a newspaper of general
34 circulation in the county in which the dissolved limited
35 partnership's principal office is located or, if it has none in

1 this state, in the county in which the limited partnership's
2 ~~designated~~ registered office is or was last located.

3 Sec. 15. Section 488.809, subsection 5, Code 2016, is
4 amended to read as follows:

5 5. The administrative dissolution of a limited partnership
6 does not terminate the authority of its registered agent for
7 service of process.

8 Sec. 16. Section 488.902, subsection 1, paragraph d, Code
9 2016, is amended to read as follows:

10 d. The name and street and mailing address of the foreign
11 limited partnership's initial registered agent for service of
12 process in this state.

13 Sec. 17. Section 488.906, subsection 1, paragraphs c and d,
14 Code 2016, are amended to read as follows:

15 c. Appoint and maintain ~~an~~ a registered agent for service of
16 process as required by [section 488.114, subsection 2](#).

17 d. Deliver for filing a statement of a change under section
18 488.115 within thirty days after a change has occurred in the
19 name or address of the registered agent for service of process.

20 Sec. 18. Section 488.906, subsection 2, unnumbered
21 paragraph 1, Code 2016, is amended to read as follows:

22 In order to revoke a certificate of authority, the secretary
23 of state must prepare, sign, and file a notice of revocation
24 and send a copy to the foreign limited partnership's registered
25 agent for service of process in this state, or if the foreign
26 limited partnership does not appoint and maintain a proper
27 agent in this state, to the foreign limited partnership's
28 ~~designated~~ registered office. The notice must state all of the
29 following:

30 DIVISION II

31 REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

32 Sec. 19. Section 489.208, Code 2016, is amended to read as
33 follows:

34 **489.208 Certificate of existence or authorization.**

35 1. ~~The secretary of state, upon request and payment of the~~

1 ~~requisite fee, shall furnish to any person a certificate of~~
2 ~~existence for a limited liability company if the records filed~~
3 ~~in the office of the secretary of state show that the company~~
4 ~~has been formed under section 489.201 and the secretary of~~
5 ~~state has not filed a statement of termination pertaining to~~
6 ~~the company. Any person may apply to the secretary of state to~~
7 ~~be furnished a certificate of existence for a domestic limited~~
8 ~~liability company or a certificate of authorization for a~~
9 ~~foreign limited liability company.~~

10 2. A certificate of existence or certificate of
11 authorization must state set forth all of the following:

12 a. The domestic limited liability company's name or the
13 foreign limited liability company's name used in this state.

14 b. One of the following:

15 (1) That the company was ~~If it is a domestic limited~~
16 liability company, that the company is ~~duly formed under the~~
17 ~~laws of this state, the date of its formation, and the period~~
18 ~~of its duration if less than perpetual.~~

19 (2) If it is a foreign limited liability company, that the
20 company is authorized to transact business in this state.

21 c. Whether ~~That~~ all fees, taxes, and penalties due under
22 this chapter or other law to the secretary of state have been
23 paid.

24 d. Whether ~~That~~ the company's most recent biennial report
25 required by ~~section 489.209~~ this chapter has been filed by the
26 secretary of state.

27 e. Whether the secretary of state has administratively
28 dissolved the ~~If it is a domestic limited liability company,~~
29 that a statement of dissolution or statement of termination has
30 not been filed.

31 f. Whether the company has delivered to the secretary of
32 state for filing a statement of dissolution.

33 g. That a statement of termination has not been filed by the
34 secretary of state.

35 h. f. Other facts of record in the office of the secretary

1 of state which are specified by the person requesting the
2 certificate that may be requested by the applicant.

3 ~~2. The secretary of state, upon request and payment of the~~
4 ~~requisite fee, shall furnish to any person a certificate of~~
5 ~~authorization for a foreign limited liability company if the~~
6 ~~records filed in the office of the secretary of state show that~~
7 ~~the secretary of state has filed a certificate of authority,~~
8 ~~has not revoked the certificate of authority, and has not filed~~
9 ~~a notice of cancellation. A certificate of authorization must~~
10 ~~state all of the following:~~

11 ~~a. The company's name and any alternate name adopted under~~
12 ~~section 489.805, subsection 1, for use in this state.~~

13 ~~b. That the company is authorized to transact business in~~
14 ~~this state.~~

15 ~~c. Whether all fees, taxes, and penalties due under this~~
16 ~~chapter or other law to the secretary of state have been paid.~~

17 ~~d. Whether the company's most recent biennial report~~
18 ~~required by section 489.209 has been filed by the secretary of~~
19 ~~state.~~

20 ~~e. That the secretary of state has not revoked the company's~~
21 ~~certificate of authority and has not filed a notice of~~
22 ~~cancellation.~~

23 ~~f. Other facts of record in the office of the secretary~~
24 ~~of state which are specified by the person requesting the~~
25 ~~certificate.~~

26 ~~3. 2.~~ Subject to any qualification stated in the
27 certificate, a certificate of existence or certificate of
28 authorization issued by the secretary of state is conclusive
29 evidence that the domestic limited liability company is
30 in existence or the foreign limited liability company is
31 authorized to transact business in this state.

32 Sec. 20. Section 489.802, Code 2016, is amended to read as
33 follows:

34 **489.802 Application for certificate of authority.**

35 1. A foreign limited liability company may apply for a

1 certificate of authority to transact business in this state by
2 delivering an application to the secretary of state for filing.
3 The application must ~~state~~ set forth all of the following:

4 ~~a.~~ The name of the foreign limited liability company ~~and,~~
5 or, if the its name does not comply with is unavailable for use
6 in this state, either a name that satisfies the requirements
7 of section 489.108, or an alternate name adopted pursuant to
8 section 489.805, subsection 1.

9 ~~b.~~ The name of the state or other jurisdiction under whose
10 law ~~the company~~ it is formed.

11 ~~c.~~ Its date of formation and period of duration.

12 ~~d.~~ The street and mailing addresses address of the company's
13 ~~principal office and, if the law of the jurisdiction under~~
14 ~~which the company is formed requires the company to maintain an~~
15 ~~office in that jurisdiction, the street and mailing addresses~~
16 ~~of the required~~ its principal office.

17 ~~d.~~ ~~e.~~ The name of the company's initial address of its
18 registered office in this state and the name of its registered
19 agent for service of process in this state at that office.

20 ~~f.~~ The name and usual business addresses of each person who
21 is responsible, alone or in concert with others, for performing
22 the management functions of the foreign limited liability
23 company, including:

24 (1) The manager of a manager-managed limited liability
25 company.

26 (2) The members of a member-managed limited liability
27 company.

28 2. A The foreign limited liability company shall deliver
29 ~~with a~~ the completed application under ~~subsection 1 a~~
30 ~~certificate of existence or a record of similar import signed~~
31 ~~by to~~ the secretary of state ~~or other official having custody~~
32 ~~of the company's publicly filed,~~ and shall also deliver to the
33 secretary of state a certificate of existence or a document of
34 similar import duly authenticated by the secretary of state or
35 other official having custody of records in the state or other

1 jurisdiction under whose law the company is formed and which
2 is dated no earlier than ninety days prior to the date the
3 application is filed with the secretary of state.

4 Sec. 21. Section 489.1103, Code 2016, is amended to read as
5 follows:

6 **489.1103 Name.**

7 The name of a professional limited liability company, the
8 name of a foreign professional limited liability company or
9 its name as modified for use in this state, and any fictitious
10 name or trade name adopted by a professional limited liability
11 company or foreign professional limited liability company shall
12 contain the words ~~"professional limited liability company"~~
13 "Professional Limited Company", ~~"professional limited company"~~
14 "Professional Limited Liability Company", or the abbreviation
15 ~~"P.L.L.C."~~, ~~"PLLC"~~, ~~"P.L.C."~~, ~~or "PLC"~~, "P.L.L.C." or "PLLC",
16 and except for the addition of such words or abbreviation,
17 shall be a name which could lawfully be used by a licensed
18 individual or by a partnership of licensed individuals in the
19 practice in this state of a profession which the professional
20 limited liability company is authorized to practice. Each
21 regulating board may by rule adopt additional requirements
22 as to the corporate names and fictitious or trade names
23 of professional limited liability companies and foreign
24 professional limited liability companies which are authorized
25 to practice a profession which is within the jurisdiction of
26 the regulating board.

27

EXPLANATION

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 GENERAL. This bill amends the "Uniform Limited Partnership
31 Act" (Code chapter 488) and the "Revised Uniform Limited
32 Liability Company Act" (Code chapter 489). Both Code chapters
33 are administered by the secretary of state.

34 AMENDMENTS TO THE UNIFORM LIMITED PARTNERSHIP ACT. When
35 referring to a limited partnership's place of business and

1 person specified to receive service of process, the bill
2 changes the name "designated office" to "registered office" and
3 the name "agent for service of process" to "registered agent
4 for service of process" or "registered agent".

5 AMENDMENTS TO REVISED UNIFORM LIMITED LIABILITY COMPANY ACT.
6 The bill makes changes relating to the information required to
7 be included in a certificate of existence issued to a domestic
8 limited liability company or certificate of authorization
9 issued to a foreign limited liability company. Information
10 required to be included in a certificate is combined into one
11 provision for both domestic and foreign companies. The bill
12 also makes changes relating to the information required to be
13 included in an application for a certificate of authorization,
14 including the limited liability company's date of formation and
15 its principal officers. Its certificate of existence filed in
16 the other state or country accompanying the application must be
17 dated no earlier than 90 days prior to the date of application.

18 BACKGROUND. A limited partnership and a limited liability
19 company are unincorporated entities that are organized
20 ("formed"), operate, may have perpetual duration, and provide
21 a measure of protection from liability to its investors under
22 state law. In order to form either type of entity in this
23 state, an organic document must be filed with the secretary
24 of state. In the case of a limited partnership, the document
25 is referred to as a certificate of limited partnership and
26 in the case of a limited liability company, it is referred
27 to as a certificate of organization (Code sections 488.201
28 and 489.201). The secretary of state issues a certificate
29 of good standing to each type of entity. For a "domestic"
30 entity formed under Iowa law, the document is referred to
31 as a certificate of existence and for a "foreign" entity
32 formed under another jurisdiction's law, it is referred to
33 as a certificate of authorization (Code sections 488.209 and
34 489.208).